

MF 01-13

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 00-ST-0000
v.)	IBT # MC-00000
)	NTL # 37-000000 P
"SASSAFRASS EXCAVATING, INC.")	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; "John" and "Jane Doe", appearing pro se on behalf of "Sassafrass Excavating, Inc.

Synopsis:

On July 7, 2000, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to "Sassafrass Excavating, Inc." ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer's employee was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The taxpayer timely protested the NTL, and an evidentiary hearing was held during which the parties presented evidence and arguments in support of their case. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On April 4, 2000, the taxpayer was operating a truck in Illinois without a valid motor fuel use tax license. (Dept. Ex. #1).

2. The truck in question had apportion plates on it. The apportion plates allow the taxpayer to drive the truck outside of Illinois. (Tr. pp. 9, 12)

3. On July 7, 2000, the Department issued NTL number 37-000000 P to the taxpayer for motor fuel use tax showing a penalty due of \$1000 for failure to have a valid license while operating the vehicle on April 4, 2000. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

"[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds ***, or having 3 or more axles regardless of weight, or that is used in combination, when

the weight of the combination exceeds 26,000 pounds ***, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. ***" (35 ILCS 505/1.16, emphasis added).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayer argues that it was not operating a commercial motor vehicle under the Act because the vehicle was used solely within the State of Illinois.

Mr. "Doe" testified that at the time of the citation, the truck had never been out of the state (Tr. p. 7). He stated that he does not travel outside of Illinois for his business. He said that he acquired the apportion plates because he owns property in Missouri and intended to drive the truck there with his equipment. The apportion plates were the same price as the straight plates, so he purchased the apportion plates in the event that he

needed to travel to Missouri. The citation was issued to the taxpayer because the vehicle had the apportion plates on it. The taxpayer was aware that these plates allowed him to travel outside of Illinois. (Tr. p. 12) He also admitted that the truck was later driven to Missouri (Tr. p. 12; Taxpayer Ex. #3). The truck left the state twice, and fuel was purchased in Missouri. (Tr. p. 13)

Unfortunately, the taxpayer has failed to present sufficient evidence to overcome the Department's *prima facie* case. The taxpayer did not present documentary proof, such as trip tickets, indicating that the truck had been operated solely within the State of Illinois prior to the issuance of the citation. The taxpayer presented evidence of the miles driven during the fourth quarter of 2000, but not prior to that time period. (Taxpayer Ex. #3) The apportion plates were purchased because the taxpayer intended to take the truck to Missouri, and it is unclear why the motor fuel tax license was not acquired if the taxpayer intended at some point to take the truck out of state. The truck was, in fact, driven out of state twice. The taxpayer should have had the proper motor fuel tax license.

It is therefore recommended that the Notice of Tax Liability, No. 37-000000 P, be affirmed in its entirety.

Linda Olivero
Administrative Law Judge

Enter: April 25, 2001